IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

CRP.No. 124 of 2003()

AGAINST THE ORDER IN EP.142/2000 IN OS.53/1986 of MUNSIFF COURT, KOTTARAKKARA
.....

REVN. PETITIONER: DECREE HOLDERS/PLAINTIFFS
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1. **PONNAMMA, WIFE OF THANKAPPAN ACHARI OF BIJU MANDIRAM, KOIKKAL BHAGOM MURI, PADINJARE KALLADA VILLAGE, FROM CHARUVILA PUTHENVEEDU, THEKKUMPURATH MURI, NEDUVATHOOR VILLAGE.**

2. **THANKAPPAN ACHARI BIJU OF DO. DO.**

3. **THANKAPPAN ACHARI BINU OF DO. DO.**

4. **THANKAPPAN ACHARI BAIJU OF DO. DO.**

5. **THANKAPPAN ACHARI SANTHOSH OF DO. DO.**

BY ADV. SRI.K.SUBASH CHANDRA BOSE

RESPONDENTS: DEFENDANTS/JUDMENT DEBTORS
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1. **KESAVAN ACHARI KRISHNAN ACHARI, G.KRISHNANKUTY ACHARI, CHARUVILA PUTHEN VEEDU, THEKKUMPURATHU MURI, NEDUVATHOOR VILLAGE.**

2. **KESAVAN ACHARI VASUDEVAN ACHARI, DO. DO.**

R1 BY ADV. SRI.C.S.MANU

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NO. 292 OF 2003
IN
CRP. NO.124 OF 2003

DISMISSED

27/7/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 124 OF 2003

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Dated this the 27th day of July, 2007.

O R D E R

This revision is filed against the order of the learned Munsiff, Kottarakkara in E.P.142/00 in O.S.53/86. The execution petition was filed by the decree holders for the execution of an injunction decree. Original plaintiff died and the legal representatives of the same person have sought the help of the Court under Order 21 Rule 32 of the CPC. The Court below dismissed the execution petition on the ground that, "It can be seen that the decree is not specific against whom it is passed" and secondly on the ground that the decree obtained by the original plaintiff is a personal decree and therefore the legal representatives cannot execute the same.

2. So far as the first ground is concerned the Court below should have applied its mind even if there is something lacking in the decree. A perusal of the judgment

would show that the decree is passed against the defendants and the defendants are restrained from doing certain acts. In a suit of this nature the relief will be granted only against the defendants and not against the whole world. So just because there is some omission committed by the decree drafting clerk the Court should not jump into a conclusion that the decree does not specify against whom it is passed. I find from the judgment of the Court below that,

> "In the result defendants are hereby restrained from trespassing into the suit property or causing any manner of waste to the building in it or any obstruction to the plaintiff in his possession and enjoyment of the suit property".

It is this operative portion of the judgment that is the decree and therefore there is no doubt in my mind regarding the person against whom the decree is passed by the Court below. Therefore, the said finding of the learned Munsiff is set aside.

3. The second point for consideration is whether the legal representatives of the deceased decree holder can file an application under Order 21 Rule 32. This Court had taken the view that even in the case of assignment it can be done. Suppose property is assigned then the assignee will step into the shoe of the decree holder and he is entitled to the benefit. In case of death, the legal representatives succeed to the property of the deceased. Here, it is a decree that is granted in favour of the plaintiff with respect to the immovable property and therefore what is sought for is to enforce the decree of the Court so far as it relates to an immovable property. Therefore, it is perfectly executable as well. The question whether there is violation of injunction or otherwise are all matters which the Court has to consider after permitting the parties to adduce evidence and hear them on merits. Therefore, the order under challenge is set aside and the learned Munsiff is directed to consider the question afresh after permitting the parties to adduce evidence in support of their respective contentions. The

parties are directed to appear before the Court below on 5.9.07 and being an old matter the Court may try to dispose of it as far as possible within a time frame of three months from the date of first appearance of the parties.

M.N. KRISHNAN, JUDGE.

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M.N. KRISHNAN, J.

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C.R.P. No. 124 OF 2003

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O R D E R

27th July, 2007.